

1. **Statutory references to "farm crossings" should not be changed to "private crossings."**

*It would not adequately resolve ambiguity over the legal meaning of the terms and would not address two important public policy concerns: Transportation efficiency and safety.*

2. **DOT is prepared to support legislation that would do the following:**

- **Provide definitions of types of private crossings, including farm crossings.** Farm crossings would be defined in a way consistent with USDOT guidelines for the inventory of private crossings. The term "farm crossing" would become more descriptive of the crossing location, but the current presumption that railroads must provide those farm crossings for which warning devices are unnecessary would continue.
- **Provide a process for parties seeking the installation of a private crossing to have a third party (DOT) decide whether the railroad should be required to allow it.**

*In discharging this responsibility, DOT would consider the need for property access and balance that against safety concerns and the interest of efficient railroad operations.*

3. **DOT does not support requiring railroads to provide crossings merely because they are requested. Both the railroads and the public have an interest in safety and the efficient operation of railroads. The potential for proliferation of crossings would increase if they could easily be obtained upon request at no cost to the requestor.**

*The principle that it is necessary to control access to transportation facilities in order to preserve their intended function is well established: E.g., adjoining property owners do not have an absolute right of access to airports or state highways.*

4. **DOT should be granted authority to determine, without a hearing, when private crossings should be allowed, based on investigation and an application of safety and cost-allocation criteria that would be stated in administrative rule. DOT should be able to authorize private crossings and order installation of warning devices at private residential, industrial, and recreational crossings.**

*New development is creating a desire for crossings for such purposes as driveways and golf courses overlapping pre-existing rail lines. As the use of land adjoining railroads changes, the potential for conflicting interests is likely to increase, requiring public involvement to balance the interests.*

*The process recommended is the same as the Governor's recommendations for rail-highway crossings.*

5. **New private crossings, other than new farm crossings for which such safeguards are unnecessary, should generally be paid for by the requestor. Recreational crossings should include snowmobile crossings.**

*Snowmobile crossings raise many of the same transportation and safety issues. Including them would mean a single agency could coordinate all private crossing issues.*

Under current law, DOR may collect from persons who owe delinquent taxes, fees, interest or penalties a fee of \$25 or 4.5% of the amount owed, whichever is greater, for each of the person's delinquent accounts. Under this bill, the fee is \$35 or 6.5% of the amount owed, whichever is greater.

Under current law, all corporations and insurers that are required to file an income tax or franchise tax return are required to pay a temporary recycling surcharge. Under this bill, all corporations and insurers that are required to file an income tax or franchise tax return and that have at least \$4,000 in total receipts from all activities for the taxable year are required to pay the temporary recycling surcharge.

## **TRANSPORTATION**

Under current law, the office of the commissioner of railroads (OCR) regulates railroad activities in Wisconsin. This bill eliminates OCR, effective July 1, 1996, and provides for the elimination or transfer of its functions as follows:

1. OCR is currently authorized to regulate railroads to prevent "unreasonable or unjustly discriminatory" rates and inadequate services within the state. The bill eliminates this authority.

2. Currently, before constructing any new track in the state, a railroad must have a certificate, which is issued by OCR only after a hearing and a finding of "public convenience and necessity". Under this bill, the certificate is issued by the department of transportation (DOT), the hearing is discretionary and the public convenience and necessity standard is abolished.

3. Under current law, OCR may order railroads to install protective devices at crossings or make other safety improvements and may determine the type of grade crossing used where a railroad intersects a street or another railroad. This bill transfers this authority to DOT and authorizes DOT to issue orders in these matters without a hearing, based on investigation and application of safety, programming and cost allocation criteria promulgated by rule. The bill provides for review of DOT orders in these matters by the division of hearings and appeals in the department of administration.

4. OCR is currently assigned various other functions relating to railroads. In most cases, those regulatory functions not eliminated in the bill are transferred to DOT and functions having the character of contested case resolution are transferred to the division. The bill requires the division to give due weight to the experience, technical competence and specialized knowledge of DOT in transportation hearings and reviews.

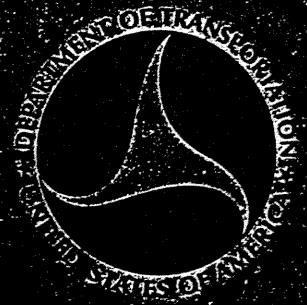
5. The bill transfers certain functions of OCR relating to railroad organization to the department of revenue (DOR).

## **VETERANS AND MILITARY AFFAIRS**

Current law allows the department of veterans affairs (DVA), subject to building commission approval, to construct and operate veterans cemeteries in northwestern and southeastern Wisconsin. This bill allows a veteran who died while on active duty, and his or her children and surviving spouse who has not remarried, who were residents of this state at the time of their deaths, to be buried in these cemeteries.

# PROCEDURES MANUAL

## National Railroad-Highway Crossing Inventory



ASSOCIATION OF AMERICAN RAILROADS

# 5

## Definitions & Instructions

## GENERAL

All highway crossings of tracks, both at-grade and grade separated are to be reported. An identification number shall be permanently placed at all locations, in accordance with instructions for mounting the number board as shown in Part 6 of this manual.

For all crossings and grade separations, the location and classification information (Part I of the OMB Form No. 04-S-73002) is to be completed. The remainder of the form (Parts II and III) is to be completed *for public at-grade crossings and questionable private crossings*. If field crew considers a crossing to be private but is not positive, then the crossing is to be designated private and the remainder of the form completed. It is important to complete the form in these questionable cases to avoid a return to the crossing if it is subsequently determined by the railroad and the public agency that the crossing is public.

Part IV of the form will be filled out by highway department personnel. Railroad employees will not fill out that portion of the form.

A railroad-highway grade crossing is to be regarded as a single crossing of all the tracks within the adjacent owned or leased railroad rights-of-way at the point of intersection with roadway at grade to the extent that the tracks are located within the limits of a single set of grade crossing signs or protective devices having an integrated set of actuating circuits.

All crossings of tracks at grade by public roads and streets are to be reported if any railroad operations are conducted. A grade crossing of a dual or multi-lane roadway is to be reported as a single crossing.

To avoid duplicate reporting of jointly owned, jointly maintained or jointly used crossings, the railroad which is designated as the reporting road for the current reports to ICC (Form 510B and 511) shall be the reporting road for this project unless otherwise mutually agreed.

After the crew has arrived at a crossing, a crossing number board is to be selected. The four miniature number labels should be removed from the number board and one placed on each copy of the inventory form in space provided at lower right hand corner. This number should also be marked

at the proper location on both copies of the county map.

The crew member filling out the form should date and initial form in upper right hand corner and complete remainder of form in accordance with the instructions in this manual.

*Items on the inventory form that are intentionally left blank should be indicated by drawing a horizontal line through the space made available for recording information.*

## DEFINITIONS

**Public Crossing:** A public crossing is a location where the tracks cross a road which is under the jurisdiction of and maintained by a public authority and which is open to public travel.

**Private Crossing:** A private crossing is a location where a physical crossing is present but the road does not meet the conditions indicated above for a public crossing. Private crossings usually restrict public use by an agreement which the railroad has with the property owner, or by gates or similar barriers.

In some instances changes in land use have resulted in an expansion of crossing use to the extent that it has become a public crossing in fact, whether or not any public agency has accepted responsibility for maintenance or control of the use of the traveled way over the crossing. The railroad company and highway agency should make every effort to mutually resolve and agree on the appropriate classification (either public or private) of questionable crossings.

An area where vehicles trespass is not to be considered a crossing. Crossings used only by the railroads are not to be reported. Crossings created to serve specific temporary activities such as construction are not to be reported.

**Pedestrian Crossing:** A pedestrian crossing is a designated area where pedestrians but not vehicles may cross a track. An area where pedestrians trespass is not to be considered a crossing. The designation of a crossing may be by a sign, device, or filled materials between the rails.

## PART I: Location of all Crossings

**ITEM 1** State name of reporting company. Reporting company should be the "operating company" that owns and maintains the roadbed, tracks, and signal system controlling the crossing. If reporting company is other than owning company, enclose reporting company name in parenthesis.

**ITEM 2** If railroad system, for operating administrative purposes, is divided into regions, lines, or districts under jurisdictions of general managers (or equivalent), state name of region, line, or district.

**ITEM 3** If railroad system (and/or region, line, or district), for operating administrative purposes, is divided into divisions or similar classifications under jurisdiction of superintendents and division engineers (or equivalent), state name of division or other classification.

**ITEM 4** Identify the state where the crossing is located. If the crossing is located on a state boundary so that parts of the crossing lay in two or more states, identify all states.

**ITEM 5** Identify the county where the crossing is located. If the crossing is on a county line so that parts of the crossing lay in two or more counties, identify all counties.

**ITEM 6** Enter county map identification or other reference number provided by the highway agency to specifically identify the crossing on the street and road system. If not available prior to field survey, leave blank.

**ITEM 7** Identify the name of the incorporated city where the crossing is located. If the crossing is on a city line so that parts of the crossing lay in two or more cities, identify all cities. If not within a city, omit this item and complete Item 8.

**ITEM 8** If not within an incorporated city, town or village, identify the name of the unincorporated city, town, or village or the nearest city, town, or village, whether or not on the railroad lines.

**ITEM 9** Identify type of highway such as U.S. numbered, state, county, town, etc., and number of highway (please abbreviate). Number of highway should be posted on the highway or found on state or county maps. If there is more than one number, enter all numbers.

**ITEM 10** If highway or street has a name/s enter the name/s. If private roadway has a name, state such name in parenthesis.

**ITEM 11** If a crossing identification number other than the DOT-AAR number or highway agency number (e.g. a railroad or PUC assigned number) is posted at or assigned to the crossing, enter that number. If a unique number has previously been assigned to the crossing, although not displayed at the crossing, enter that number.

**ITEM 12** State name of nearest timetable station of operating company.

**ITEM 13** Line or branch name as used by railroad to describe this segment of track in conjunction with milepost. If track is an industry lead, industry spur, yard lead, wye, etc., state name of such track.

**ITEM 14** State railroad milepost in miles and hundredths of miles. (53 feet is approximately 1/100 mile.) Enough descriptive material must be in Items 13 and 14 so that the crossing can be identified along a RR line.

**ITEM 15** Enter appropriate pedestrian crossing type.

**ITEM 16** For private crossings, at least three items must be checked, one in 16A., 16B., and 16C.

**ITEM 16A** Check the box which best describes the crossing usage based on the following categories:

1. A *farm crossing* is any crossing used for the movement of motor vehicles, farm machinery or livestock in connection with agricultural pursuits, forestry, or other land-productive purposes.
2. A *residential crossing* is any crossing used to provide vehicular access for occupants and their invitees to a private residence or residences.
3. A *recreational crossing* is any crossing used to provide access to otherwise isolated recreational facilities, such as parks or hunting and fishing areas.
4. An *industrial crossing* is any crossing used to provide access between industrial plant facilities or to an industrial or other commercial area.

**ITEM 16B** Check appropriate box for crossing type.

**ITEM 16C** Specify type of crossing protection.

**ITEM 17** Check appropriate box for type of public crossing and *complete the remainder of the form for public vehicular crossings at-grade, and for those crossings which cannot be clearly identified as private.*

**NOTE:** Person completing Crossing Inventory Form please sign and date.

OMB-04-S-73002

**U.S. DOT - AAR CROSSING INVENTORY FORM**  
(PLEASE PRINT)

INITIALS: \_\_\_\_\_

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

**Part I Location and Classification of All Crossings (Must Be Completed)**

1. Railroad Operating Company \_\_\_\_\_

2. Railroad Division or Region \_\_\_\_\_

3. Railroad Subdivision or District \_\_\_\_\_

4. State \_\_\_\_\_

5. County \_\_\_\_\_

6. County Map. Ref. No. \_\_\_\_\_

7. City \_\_\_\_\_

8. Nearest City \_\_\_\_\_

9. Highway Type and No. \_\_\_\_\_

10. Street or Road Name \_\_\_\_\_

11. RR I.D. No. \_\_\_\_\_

12. Nearest RR Timetable Station \_\_\_\_\_

13. Branch or Line Name \_\_\_\_\_

14. Railroad Mile Post \_\_\_\_\_

15. Pedestrian Crossing  
☐ 1. at grade  
☐ 2. RR under  
☐ 3. RR over

16. Private Vehicle Crossing  
A. ☐ 1. Farm ☐ 2. Residential ☐ 3. Recreational ☐ 4. Industrial  
B. ☐ 5. at grade C. ☐ 8. signs—specify \_\_\_\_\_  
☐ 6. RR under ☐ 9. signals—specify \_\_\_\_\_  
☐ 7. RR over ☐ 0. none

17. Public Vehicle Crossing  
☐ 1. at grade  
☐ 2. RR under  
☐ 3. RR over

**DO NOT WRITE IN THIS SPACE**

State \_\_\_\_\_ County \_\_\_\_\_  
City \_\_\_\_\_ Nearest City \_\_\_\_\_  
RR Code \_\_\_\_\_ Timetable Station \_\_\_\_\_

**COMPLETE REMAINDER OF FORM ONLY FOR PUBLIC VEHICLE CROSSINGS AT GRADE**



1972

Appreciate the actions

1900 farm crossings  
3000 private

Railroads pay out for them  
proliferation of crossings

whether safeguards are needed

- ① farm
- ② residential
- ③ recreational
- ④ industrial

cost-sharing

informal <sup>non-</sup>hearing process

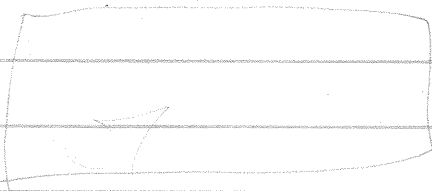
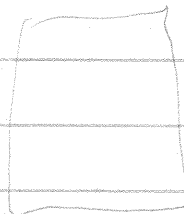
check w/ Tom on snowmobiles

~~★~~ Highway Design

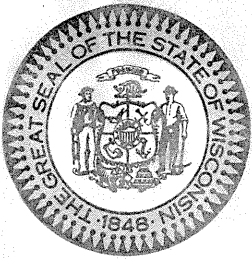
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Highway Const

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## DAVID BRANDEMUEHL

State Representative  
49th Assembly District

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February 8, 1995

The Honorable Tommy G. Thompson  
Governor, State of Wisconsin  
115 East, State Capitol  
INTERDEPARTMENTAL

Dear Governor Thompson:

I am writing to request that you include language in your Transportation Budget replacing the word "farm" with "private" to clarify statutory language regarding railroad crossings. Your 1993-95 budget proposal contained the same measure.

During budget deliberations on the 93-95 budget, the Joint Committee on Finance opted to delete your recommendation and asked the Department of Transportation (DOT) to address the issue of "farm" versus "private" in a study of transportation regulation statutes. DOT also was asked to include its findings, conclusions and recommendations in a report to you and the Legislature. Since that time, we have received nothing from the department regarding this particular issue.

The Wisconsin Supreme Court has held that the right to a "farm crossing" is not limited to adjoining lands used solely for agricultural purposes. The court found that the word "farm" was descriptive of the crossing and not of the adjoining lands and applies to any privately-owned property. Therefore, the language in our statutes is inappropriate.

A modification of statutory language is needed so railroad companies are required to construct and maintain "private" railroad crossings for use by the occupants of the adjacent land. I am satisfied this measure will clarify the meaning of the statute.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "David".

David A. Brandemuehl  
State Representative  
49th Assembly District

DAB:jt

that the village violated the FHA by failing to reasonably accommodate Tellurian.

## VI.

[12, 13] Tellurian seeks a judgment declaring that the statutory distance restriction in sec. 62.23(7)(1), Stats., violates the FHA. A declaratory judgment action cannot be brought unless a justiciable controversy exists. *Weber v. Town of Lincoln*, 159 Wis.2d 144, 146-47, 463 N.W.2d 869, 869 (Ct.App.1990). A justiciable controversy exists when (1) a claim of right is asserted against one who has an interest in contesting it, (2) the controversy is between persons whose interests are adverse, (3) the party seeking relief has a legally protectible interest in the controversy, and (4) the issue involved is ripe for judicial determination. *Id.* at 147, 463 N.W.2d at 869.

No controversy exists between the parties regarding the distance restriction. The federal court granted Tellurian an exception to the statute. Valid or not, the statute no longer impedes Tellurian's plans to develop its proposed group home. For that reason, we do not decide whether sec. 62.23(7)(1), Stats., violates the FHA.

## VII.

Because the village failed to make a reasonable accommodation by refusing to grant the exception to Tellurian, we remand the case for a determination of damages and attorney's fees under 42 U.S.C. § 3613(c).

Judgment affirmed in part, reversed in part and cause remanded with directions.



SIXMILE CREEK ASSOCIATES, INC., a Wisconsin corporation, and, Robert R. Ranguette, Petitioners-Plaintiffs-Respondents,

v.

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation, Respondent-Defendant-Appellant.

No. 93-0127.

Court of Appeals of Wisconsin.

Submitted on Briefs June 4, 1993.

Opinion Released July 1, 1993.

Opinion Filed July 1, 1993.

Property developer brought mandamus action to compel railroad to construct farm crossings for track on proposed golf course. The Circuit Court, Dane County, Michael N. Nowakowski, J., found that proposed crossings were "farm crossings" and ordered their construction by railroad. Appeal was taken. The Court of Appeals, Eich, C.J., held that proposed crossings were not "farm crossings" where golf course was to be public in nature and would require various safety precautions.

Reversed and remanded with directions.

Dykman, J., filed dissenting opinion.

## 1. Railroads ⇐102(5)

"Farm crossings" are crossings required for use of occupants of adjoining lands, as distinguished from highway crossings and railroad crossings, and are not limited to farm or agricultural use. W.S.A. 192.33(1).

See publication Words and Phrases for other judicial constructions and definitions.

## 2. Railroads ⇐102(6)

"Farm crossing," which is distinguished from highway crossing as result of lesser degree of protection offered to users

Cite as 504 N.W.2d 348 (Wis.App. 1993)

and fact that crossing exists only to accommodate occupants of adjoining land, is private in nature and is the lowest form of crossing in that it is not intended to entail any use which would make warning signs or signals or train speed limits necessary in interest of public safety. W.S.A. 192.33(1).

## 3. Railroads ⇐102(1), 109

Where golf course was to be open to public, railroad crossings within golf course would not be private in nature as necessary for crossings to be designated as "farm crossing" which railroad could be required to construct and maintain; fact that players would be required to check in the club house and pay greens fee did not make golf course "private." W.S.A. 192.33(1).

## 4. Railroads ⇐102(1), 109

Railroad crossings within proposed public golf course were not private in nature and would require warning signs and various safety precautions, and, thus, crossings were not "farm crossings" which railroad could be required to construct and maintain; farm crossings as defined by statutes entail limited private use for which warnings and safeguards were unnecessary. W.S.A. 192.33(1).

For the respondent-defendant-appellant the cause was submitted on the briefs of Michael D. Stodter and Thomas L. Smallwood of Borgelt, Powell, Peterson & Frauen, S.C., of Milwaukee.

For the petitioners-plaintiffs-respondents the cause was submitted on the brief of Don M. Mills and Kim Grimmer of Ross & Stevens, S.C., of Madison.

Before EICH, C.J., GARTZKE, P.J., and DYKMAN, J.

EICH, Chief Judge.

The Chicago and North Western Transportation Company appeals from a judgment and absolute writ of mandamus ordering it to construct and maintain three at-grade "farm crossings" on its railroad right-of-way and track running through

land on which Sixmile Creek Associates, Inc., plans to construct a golf course.

The issue is whether, given the nature of the property and the intended use of the proposed crossings, they qualify as "farm crossings" within the meaning of sec. 192.33(1), Stats., which requires railroads to "erect and maintain . . . suitable and convenient farm crossings for the use of the occupants of [adjoining] lands. . . ." We hold that they do not and reverse the judgment.

Sixmile was incorporated for the purpose of developing a 428-lot residential subdivision near the Village of Waunakee in Dane County. Included in the project is a 155-acre golf course over which C & NW owns and operates a single-track railroad right-of-way. An average of two eighty to one hundred-car trains operates over the track each day at a maximum speed of thirty miles per hour.

The proposed golf course will be open to the public, with a limited number of private memberships. During the three and one-half month "peak" golf season, approximately 200 persons will be playing the eighteen-hole course daily, with approximately 100 persons playing daily during an equally long "non-peak" season. In all, there will be over 85,000 crossings of the C & NW track by golfers each year, in addition to an unknown number of crossings by course maintenance employees.

When C & NW declined Sixmile's request that it construct the three crossings on the course, Sixmile brought this mandamus action under sec. 192.33(1), Stats., to compel it to do so. After taking evidence, the trial court concluded that the proposed crossings were "farm crossings" within the meaning of the statute and ordered the railroad to build them. Specifically, the court ordered C & NW to construct and maintain the portions of the crossings within the railroad right-of-way and required Sixmile to build and maintain the approaches and to pay "[t]he entire cost of installation of the . . . crossings." The court also directed that Sixmile install a variety of warning signs and devices at the crossings and elsewhere along the track

and adopt a series of rules warning golfers of the dangers of the crossings. The railroad appeals.

[1] "Farm crossings" are distinguished from highway crossings both in their use and the extent of required crossing protections. *Manitowoc Clay Prod. Co. v. Manitowoc, G.B. & N.W. Ry. Co.*, 135 Wis. 94, 101, 115 N.W. 390, 393 (1908). They are not limited to farm or agricultural use. Rather, "[t]he words 'farm crossings' are descriptive of the kinds of crossings required for the use of occupants of adjoining lands, as distinguished from highway crossings . . . and railroad crossings." *Id.* Thus, courts have ordered that farm crossings be established under the statute to enable owners whose lands are bisected by the railroad to operate a quarry,<sup>1</sup> a logging enterprise,<sup>2</sup> or, as in *Manitowoc*, a brickyard.

[2] What primarily distinguishes a farm crossing from a highway crossing is the lesser degree of protection offered to its users, and the fact that the crossing exists "only to accommodate the occupants of [the adjoining land]." *Weiss v. Chicago, N.S. & M.R.R.*, 9 Wis.2d 581, 590, 101 N.W.2d 688, 693 (1960).

A farm crossing is the simplest, or "lowest," form of railroad crossing. It is private in character, access to the same being through or upon private lands, and its purpose is only to accommodate the occupants of such lands. The statutes set out no standards for the establishment and maintenance of a farm crossing except that it be "suitable and convenient" for the use of the adjoining landowner. At such a crossing the railroad is not required to maintain warning signs or give warning whistles or slow the speed of its trains. *In stating that a farm crossing shall be "suitable and convenient" the law does not contemplate any use of the crossing which would make such regulation necessary in the interest of public safety. Id.* (emphasis added).

1. *Buffalo Stone & Cement Co. v. Delaware, L. & W. Ry. Co.*, 130 N.Y. 152, 29 N.E. 121 (1891).

A farm crossing under sec. 192.33(1), Stats., then, has two primary characteristics: it is private in nature and is the "lowest form" of crossing in that it is not intended to entail any use which would make warning signs or signals or train speed limits, or similar safety precautions, "necessary in the interest of public safety."

[3] In this case the golf course will be open to the public and, as we have noted, will involve more than 85,000 crossings by golfers each year. The trial court concluded, nonetheless, that various "restrictions" proposed by Sixmile on the use of the course—guarding against trespassers, and adopting rules providing that all golfers must check in at the clubhouse before playing, where they will receive a written admonition to read and obey all signs located on the course and be required to sign a hold-harmless form—will ensure that the crossings will remain private and "not [be] converted] . . . into . . . public crossing[s]." We disagree. We do not believe such "restrictions" are adequate to render the crossings private in the face of Sixmile's acknowledgment that the course "will be a public golf course," and that "[a]nybody from the public can play . . . [a]s long as they pay the greens fee."

[4] Nor do we consider the proposed crossings to be of such a nature as "not [to] require] . . . warning signs" or similar safety devices. Indeed, the trial court itself felt the need to impose added safety requirements as a condition of its order, directing that Sixmile, among other things, (a) erect and maintain stop signs and cross-buck signs at each crossing, (b) paint stop lines on the pavement adjacent to each side of the track in the area of the crossings, (c) place additional warning signs directing golfers to stop and look both ways before entering the crossing and still more warning signs at 300-foot intervals along both sides of the track, (d) maintain a level grade for thirty feet on each side of each crossing and remove all trees and vegetation along the right-of-way in order to

2. *Caldon v. Chicago, St. P. M. & O. Ry. Co.*, 85 Wis. 527, 55 N.W. 955 (1893).

maintain a "sight distance" of 400 feet on either side of the crossing, and (e) implement the rules regarding advance golfer check-in, distribution of written warnings and execution of hold-harmless agreements, discussed above.<sup>3</sup>

As we have said, "farm crossings," as contemplated by sec. 192.33(1), Stats., are those entailing a limited private use for which such warnings and safeguards would be "[u]nnecessary in the interest of public safety." *Weiss*, 9 Wis.2d at 590, 101 N.W.2d at 693. In this case, the trial court went to great lengths to emphasize its concern for considerations of safety at the proposed crossings and conditioned its order requiring their construction upon Sixmile's installation and implementation of a variety of signs, warnings and safety-related operations. If the crossings are of such a nature as to require these additional safeguards, they cannot be considered farm crossings within the meaning of the statute. We therefore reverse the judgment entered on December 17, 1992, and remand to the trial court with directions to grant C & NW's motion to quash the alternative writ and dismiss Sixmile's action.

Judgment reversed and cause remanded with directions.

DYKMAN, Judge (dissenting).

The trial court made a number of findings which supported its decision. These included the statistic that nationwide, accidents involving trains occur, on average, once every thirty-eight years at each railroad crossing. At least three other golf courses in Wisconsin have active railroad lines passing through them. No accident has occurred between a train and a golfer or a train and a golf cart.<sup>1</sup> The trial court

3. In an attempt to justify its argumentative assertion that we are "penalizing" Sixmile for its good works in supporting safety at the crossings, the dissenting judge criticizes as erroneous our reference to the trial court's "requirement" that warning signs and other safety measures be included in the crossings. The criticism ignores the plain language in the court's judgment that "Petitioners-Plaintiffs shall incorporate and employ all the precautions set forth on Exhibit No. 19 for so long as they use their property as a golf course. . . ." The exhibit was prepared by

Section 192.33(1), Stats., requires only that a farm crossing be "suitable and convenient." The majority recognizes that the term "farm crossing" may properly have nothing to do with farms. The term refers only to a type of crossing with the least need for protection.

In *Weiss v. Chicago, N.S. & M.R.R.*, 9 Wis.2d 581, 591, 101 N.W.2d 688, 693 (1960), the court recognized the significance of findings of fact made by the trial court. The court said:

Certainly, where there are findings, not only of great expense to the railroad and interference with its operation, but of great hazard and danger to the traveling public, we have circumstances where the use of a farm crossing for the purposes creating the unsafe condition can and should be "denied altogether."

*Id.*

Expense, interference, hazard and danger are factors the trial court weighs against convenience and suitability of the crossing. The *Weiss* court noted that there are no standards for the establishment and maintenance of a farm crossing except suitability and convenience. *Id.* at 590, 101 N.W.2d at 693. One would search for a long time before finding another statute Sixmile, so it is true that they suggested the precautions. It is also true, however, that the trial court, recognizing the need for safety devices at the crossings, did indeed "require" that they be installed as a condition of approving the crossings.

1. The trial court noted that there had been one minor incident in which a train struck an unattended pull cart at the La Crosse Country Club

which gives as much discretion to the trial court.

The majority does not consider whether the trial court's findings of fact are clearly erroneous, nor whether the trial court improperly exercised its discretion when it balanced the railroad's interests against those of Sixmile. Its analysis is *de novo*. I think that this approach fails to consider the deference we give to trial courts' findings and discretionary rulings.

By analyzing this case as a "public-private" issue, the majority changes the *Weiss* directive that a trial court is to balance convenience against safety. That court said:

Since the public service commission has no jurisdiction over a farm crossing, it must be held to be within the jurisdiction of a court of equity to determine whether or not the use of such a crossing in furtherance of a commercial use of the adjoining land is in the interest of public safety.

*Id.* at 590, 101 N.W.2d at 692.

The supreme court's analysis in *Weiss* makes common sense. Whether a crossing would be so unsafe that it should be prohibited is the only real question. The public or private nature of the crossing may be a factor in this analysis, but it ought not be dispositive. Were Sixmile to be organized as a private golf course, with memberships sufficient to create 85,000 crossings per year, the danger of pedestrian-train accidents would be the same.

The majority also reasons that if the trial court believed it necessary to require warning signs, the crossings could not be farm crossings. The problem with this reasoning is that the trial court did not "require" the signs. The signs were included in an exhibit Sixmile introduced to show how it intended to build the crossings.

Sixmile contended that it was interested in safety on its golf course. The signs and methods of construction of the crossing were features Sixmile asked the trial court to consider when determining whether to grant Sixmile's petition. The trial court considered and accepted the proposed signs

as it considered field of view, train speed, train frequency and the safety record of other golf course crossings. Had Sixmile omitted the warning signs from its presentation, its chances of success at trial might have diminished, but its chances as a respondent on appeal would have increased considerably. In future cases, applicants would be well advised to omit warning signs from their proposed crossings. I find this anomalous.

The majority is penalizing Sixmile because it took an interest in its patrons' safety and attempted to alleviate the railroad's concerns about the crossings. The majority requires a safety analysis to be made as the land now exists—a farm field—not as it would be used by the golf course. This does not make sense to me, and it is unfair to Sixmile.

The trial court made findings of fact which cover fourteen pages of transcript. These findings cover every aspect of the need for the crossings by Sixmile and the detriment to the railroad of having those crossings. The court considered alternative ways of constructing the course. It did an extensive cost-benefit analysis, with an emphasis on safety. It recognized that absolute safety was impossible to achieve. It considered the cost of tunnels or overhead crossings. It noted the low use of the tracks, the slow speed of the trains, the high visibility of approaching trains, and the excellent safety record at other golf course farm crossings. It found that detriment to the railroad was *de minimis*. The trial court's balancing of the parties' interests and its conclusions of law cover nine more pages of transcript.

Were I writing for the majority, I would conclude that the trial court's findings of fact were not clearly erroneous, and that it did not erroneously exercise its discretion. I would do so because appellate courts traditionally defer to trial courts in these areas. Having accepted the trial court's findings and exercise of discretion, it would be nearly impossible to reject its conclusion that the farm crossings are suitable and

JACOBS v. KARLS  
Cite as 504 N.W.2d 353 (Wis. App., 1993)  
convenient. Thus, were I writing for the majority, I would affirm.



HILLARD JACOBS and Beverly Jacobs, Plaintiffs,

v.

GARY KARLS and Mary Karls, Defendants—Third Party Defendants—Appellants,

v.

CALUMET EQUITY MUTUAL INSURANCE COMPANY, Third Party Defendant—Respondent.

No. 92-3052.

Court of Appeals of Wisconsin.

Submitted on Briefs April 22, 1993.

Opinion Released July 7, 1993.

Opinion Filed July 7, 1993.

Landlords commenced replevin action upon conclusion of lease term. Tenants counterclaimed that landlords were negligent in failing to perform duties of repair and maintenance under lease, and brought third-party complaint against comprehensive general liability insurer, claiming coverage for landlords' alleged negligence in failing to fulfill those obligations. The Circuit Court, Calumet County, Donald A. Poppy, J., granted insurer's motion for summary judgment. Appeal was taken. The Court of Appeals, Anderson, J., held that trial court erred by holding that landlords' lease covenant to be responsible for major repairs did not create common-law duty actionable in tort, and that there was consequently no coverage under policy.

Reversed.

WIS. 353  
Insurance —155.1  
1. Appeal and Error —842(8)

When only issue is whether insurance policy covers actions of insured, issue becomes question of law, reviewable by Court of Appeals without deference to circuit court.

## 2. Negligence —2

When parties' relationship is defined by contract, there must be an independent common-law duty on part of one party in order for injured party to pursue negligence action.

## 3. Landlord and Tenant —164(2)

Landlord who contracts to make repairs to premises assumes duty to use ordinary care in keeping premises in safe and habitable condition, and when landlord fails or refuses to make promised repairs there is violation of duty to use ordinary care, and if that violation is cause of personal injury or property damage, injured party can assert negligence cause of action.

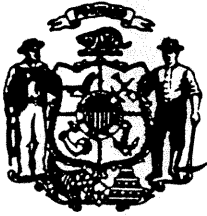
## 4. Landlord and Tenant —164(3)

Landlord who had undertaken to make repairs on leased premises had assumed common-law duty to use ordinary care in making such repairs, which was independent of any duty assumed in lease contract.

## 5. Insurance —435.35

Trial court erred by holding that landlords' covenant to be responsible for major repairs did not create common-law duty actionable in tort, and that there was no coverage under tenants' general comprehensive liability policy as landlords' failure or refusal to repair allegedly defective milking system was simply breach of contractual duties excluded by policy.

On behalf of the defendants-third party plaintiffs-appellants, the cause was submitted on the briefs of Scott Lawrence of Lawrence & Cherella, S.C. of St. Nazianz. On behalf of the third party defendant-respondent, the cause was submitted on the briefs of Donald H. Carlson and John T.



**TOMMY G. THOMPSON**

**Governor  
State of Wisconsin**

*DOT Routed letter  
#105938*

January 20, 1993

James C. Frazier  
Route 2, Box 128  
Muscodia, WI 53573

Dear Mr. Frazier:

I appreciate you taking the time to write regarding your problem with the Department of Transportation (DOT).

While I remain very concerned with the impact this situation may have on your business, I must allow the state agency with jurisdiction over this matter, in this case DOT, to carry out its duties. However, I have contacted Transportation Secretary Charles Thompson and asked him to direct his staff to work with you to as great an extent as possible to minimize the negative impacts on your situation.

I sincerely believe the Department of Transportation will be fair in this case.

Sincerely,

**TOMMY G. THOMPSON**  
Governor

TGT/dkt



## DAVID BRANDEMUEHL

State Representative  
49th Assembly District

November 16, 1992

RECEIVED  
NOV 18 7 1992  
OFFICE OF  
THE SECRETARY

Mr. Thomas Walker, Executive Assistant  
Wisconsin Department of Transportation  
4802 Sheboygan Avenue  
Madison, WI 53702

Dear Mr. Walker:

In reference to our previous conversations regarding the railroad crossing on the James Frazier property in Blue River, I would like to make a few additional comments.

On Friday November 6th, the Rail Commission voted unanimously to pay for the crossings. The benefits of new crossings are far-reaching. If you were to rehabilitate every eligible crossing, it would be a drop in the bucket compared to the millions of state dollars going into rehabilitation of the line.

Mr. Frazier received his permit in 1988. Although his contract states that he may be charged for the project, he is not required to pay for it. If you are fearful of setting a precedent, there may not be a single situation statewide regarding a railroad crossing problem similar to Mr. Frazier's. Whether it is a business or a property owner, there should be equal access.

The decision to fund the project is a small investment that will go a long way toward improving public relations for the Department of Transportation in southwestern Wisconsin. After all, you certainly don't want to have the same reputation the DNR has with landowners in the Lower Wisconsin Riverway.

Thank you for your time and consideration. If you have any comments or questions, please feel free to contact me.

Sincerely,

David A. Brandemuehl  
State Representative  
49th Assembly District

cc: Governor Tommy Thompson  
Secretary Charles Thompson, DOT  
James Frazier



## Wisconsin & Southern Railroad Co.

Box A  
Horicon, Wisconsin 53032  
Phone: 414-485-4732

NOVEMBER 13, 1992

Paul C. Heitmann, Director  
BUREAU OF RAILROADS AND HARBORS  
WISCONSIN DEPARTMENT OF TRANSPORTATION  
4802 Sheboygan Avenue  
P.O. Box 7914  
Madison, WI 53707-7914

VIA TELEFAX: 608-267-6748

Dear Mr. Heitmann:

In response to your letter of November 12, 1992 regarding Mr. Frazier's private crossing of the railroad line in the general area west of Muscoda, please be advised of the following:

It has been the policy of the Wisconsin & Southern Railroad that rehabilitation and maintenance of private crossings is done at the expense of the private party. It is also our policy that the work must be performed by our railroad or by a qualified contractor approved by our railroad. The railroad's liability insurance carrier insists that track work be done by qualified, insured contractors, or by the railroad's own work force.

Therefore, out of necessity, the Wisconsin & Calumet Railroad has adopted the same policy since the W&S management has been in charge of the operations of the WICT.

Please be advised that the WSOR/WICT maintenance of way crews are booked solid for the remainder of this year. It would therefore be advised that Mr. Frazier should contract with a qualified contractor, who is approved by our Superintendent of Maintenance, Ben Meighan. Mr. Meighan can be contacted at 414-485-2507, for a list of qualified contractors.





## Wisconsin & Southern Railroad Company

Paul Heitmann  
November 13, 1992  
Page 2:

The installation of a temporary crossing, its subsequent removal and installation of a permanent private crossing would end up costing more than it would to proceed to put in a permanent private crossing in the first place. If a temporary crossing is put in place, it too must be done with by a qualified contractor. If a private crossing is put in, it must be accompanied with an agreement that it is in fact temporary, and will be removed and replaced with an approved permanent private crossing prior to 7/1/93. The agreement must also indicate that if such temporary private crossing is not replaced with a permanent private crossing by that date that the Railroad shall have the right to remove the temporary crossing, at the expense of the party who requested such crossing.

I hope this letter clarifies the WSOR/WICT policy as it applies to the construction and maintenance of private crossings of our railroad lines. Should you require further clarification please contact me at 414-485-4229.

Sincerely,

James J. Malloy  
Executive Vice President  
& Chief Operating Officer  
Wisconsin & Southern Railroad  
Wisconsin & Calumet Railroad



## Wisconsin Department of Transportation

November 12, 1992

James J. Malloy  
Wisconsin & Southern Railroad Co.  
511 Barstow St.  
P.O. Box A  
Horicon, WI 53032

BUREAU OF RAILROADS AND HARBORS  
4802 Sheboygan Avenue  
P. O. Box 7914  
Madison, WI 53707-7914

Telephone (608) 267-7348  
FAX (608) 267-6748

### VIA TELEFAX

Dear Mr. Malloy:

I am writing to you as part of an effort to resolve the problems associated with Mr. Frazier's private crossing of the railroad line in the general area west of Muscoda.

In light of the policy of the department and of your railroad, that rehabilitation and maintenance of private crossings is done at the expense of the private party and that the work must be performed by the railroad or a qualified contractor approved by the railroad, you are asked to consider the following request, which would be an exception to this policy.

Mr. Frazier has asked if he could perform the rehabilitation work (now actually a reinstallation of a crossing) himself. Your Chief Engineer, Ben Meighan, has stated the railroad could not perform the work before next spring.

In order to allow Mr. Frazier access to his property before next spring, would the WSOR authorize Mr. Frazier himself to install, or would WSOR install, a stop-gap temporary crossing at Mr. Frazier's expense with the written commitment that he will, no less than 10 days in advance of WSOR rebuilding a more permanent crossing to regular standards, deposit the estimated cost of the work and materials with the railroad. The railroad would then perform the work and refund to Mr. Frazier any overpayment within 10 days of work completion or bill for any cost in excess of the estimate to Mr. Frazier. Failure of Mr. Frazier to make the deposit as indicated would be deemed consent by Mr. Frazier to the removal and permanent abandonment of the crossing.

James J. Malloy  
November 12, 1992  
Page 2

I am attempting to enable the issue to be resolved as soon as possible. Therefore, I would appreciate your response to this letter regarding Mr. Frazier's request as soon as possible. My telefax number is (608) 267-6748.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul Heitmann".

Paul C. Heitmann, Director  
Bureau of Railroads & Harbors

PCH:dla:1147-p

Fraizer Xing

Sent Fax to Ben & Ted 11-9-92

CORRESPONDENCE/MEMORANDUM \_\_\_\_\_ State of Wisconsin

Date: November 6, 1992

To: Paul C. Heitmann, Director  
Bureau of Railroads & Harbors

From: Thomas R. Wildenborg, Chief  
Rail Engineering & Safety Section

Subject: Fraizer's Private Crossing at Mile Post 197.4 in the Town of Muscoda, Grant County, Wisconsin

Paul, this memo is to provide you with some background and specific information regarding the Fraizer Crossing at the location noted above.

1. When the rehabilitation project was developed, it was outlined by WRRTC staff and myself that all private crossings would be handled as follows. The following is consistent with all lines that have been rehabilitated in the past.
  - A. Those private farm crossings that appear on the right-of-way maps and track profile records would be considered as included with the original deeds and the project would fund 100% of their renewal cost. Some of these private farm crossings appear to be unused for many years, which was confirmed by the operating railroad, and these crossings were considered abandoned and would be removed. On the current project, only one land owner objected and his crossing was put back in.
  - B. Those private crossings that were installed since the Department of Transportation acquired the line and that were covered by a "private road crossing permit" would be funded 100% by the permittee of the permit. The Fraizer Brothers crossing, among others, were included in this category. A copy of the permit is attached for your information. Please note Item 4 of the permit which includes the following language. "The permittor or its agent shall, at permittee's sole cost of expense, maintain, repair and renew said crossing. This may include the cost of rebuilding the crossing if and when the project is rehabilitated."

The railroad informed the project that these private crossings that were previously constructed were constructed using former cross ties. It was decided that the crossing shall conform with project specifications having all new ties installed and standard 20' two-rail crossings installed. The project also decided to provide at no cost to the permittee all of the new ties, the 20' flange rails, and the ballast to the crossings. The only cost to the permittees would be the contractor's cost for labor and equipment to renew the crossing and the cost of crushed aggregate base course and installation of the same.

- C. Those private crossings that were installed without Wisconsin DOT, railroad or WRRTC's approval would be funded 100% by the party using the crossing. In addition, WRRTC requires those parties to execute a private road crossing permit, similar to the one used in Item B above. Cost for constructing these crossings is the same as described in B above, except that the party had to pay an additional \$150.00 to the WRRTC for the permit processing.

- D. One private grade crossing on this most recent segment of track was renewed by the operating railroad. The WICT told us last year that they would have this one private crossing renewed prior to our contractor beginning work this past summer.

However, as it turned out, the crossing wasn't renewed until after the contractor renewed the track on both sides of the crossing. The railroad did eventually renew the crossing at 100% cost to the private road crossing user with the project again providing the new ties and flange rails at no cost to the user. The cost for the installation of this crossing is \$2,005.00 as reported to me by the railroad.

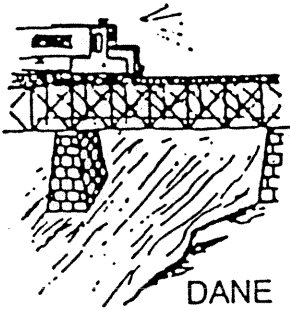
2. The WRRTC indicated that all private crossings would be included in the project and handled similarly to the private crossings located east of Muscoda.

On August 12, 1992, Joan Foeste (working for the WRRTC) Ted Schnepf, and myself met with all four users of the private crossings. Joan had set up previous appointments with three of them and, in addition, we met with Jim Fraizer's son at their lumber facility. At these crossings, we advised the people; a) that the rehabilitation project would be working through their crossing near the end of September of this year; b) that these crossings would be raised about three inches and would require renewal with a two-rail grade crossing; c) that they would be required to pay for the renewal of the renewed crossing and that the actual cost would be what the contractor is charging the commission; d) that the project would provide the ties and ballast and the two-rail crossing at no cost to the crossing user; e) that the crossings without a permit would require a new permit; and f) that they would receive a letter detailing the exact cost for their crossing in a matter of weeks.

3. A letter dated September 10, 1992 was sent by Joan Foeste to Jim and Joe Fraizer detailing the cost of the new crossing. A copy of this letter is attached to this memo.
4. Ted Schnepf tells me that he has had several conversations with Jim Fraizer about the renewal of this crossing. Ted has tried to explain to Jim Fraizer that he is being treated like others who have private crossings, but Mr. Fraizer still feels he is being singled out.

At a recent WRRTC meeting, Mr. Fraizer and other local folks appeared to get the commission to change their minds. This meeting was October 23, 1992; and at this meeting, I had an opportunity to explain again to the WRRTC and to the local folks (including Mr. Fraizer) what the project did and why they did it.

5. On September 29, 1992, Mr. Fraizer's crossing was removed and ditches were dug at the approximate property line to prevent trespassing.
6. On October 9, 1992, Mr. Fraizer received another letter indicating that his permit would be terminated as of December 8, 1992 as per Item 11 of the permit. A copy of this October 9 letter is also attached.



# Wisconsin River Rail Transit Commission

426 Karrmann Library - Platteville, Wisconsin 53818

DANE IOWA SAUK GRANT CRAWFORD ROCK WALWORTH WAUKESHA  
Phone (608)342-1214

Richard Scullion, Chairman

October 15, 1992

Messrs. Jim and Joe Fraizer  
Fraizer Brothers Log & Lumber  
Box 134  
Muscoda, Wisconsin 53573

Dear Messrs. Fraizer:

In response to Joan Foeste's September 10, 1992 letter to you requesting payment of \$1,303.48 for rehabilitation of your private grade crossing near Milepost 197.40, you met with Ted Schnepf on September 23, 1992 to discuss this fee and the upcoming crossing work. Ted indicated that:

- a. your payment must be received by Friday, September 25, 1992 or your crossing would be removed;
- b. reinstallation of the crossing at a future time would cost more because the rehab crew would no longer be in your area; and
- c. you would not be allowed to reconstruct the crossing on your own.

Your payment was not received, and your crossing was removed on Tuesday, September 29, 1992. On Thursday, October 1, 1992, a WisDOT employee posted a "No Trespassing" sign at the site.

You have breached Item 4 of your crossing permit dated January 26, 1988 by not paying for the cost of rebuilding the crossing when the rail line was rehabilitated on September 30, 1992.

In accordance with Item 11 of the permit, this letter serves as 60 days written notice that our agreement is terminated and your permit revoked as of December 8, 1992.

If you have any questions, please call me at 608-274-6185 after 8 pm.

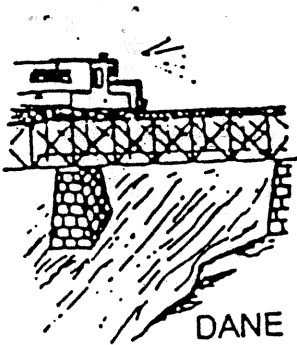
Sincerely,

A handwritten signature in black ink, appearing to read "Richard Scullion", with a long, sweeping horizontal stroke at the end.

Richard Scullion  
Chair

cc: Joan Foeste  
Ted Schnepf  
Tom Wildenborg  
Frank Huntington  
James Malloy





# Wisconsin River Rail Transit Commission

426 Karrmann Library - Platteville, Wisconsin 53818

DANE IOWA SAUK GRANT CRAWFORD ROCK WALWORTH WAUKESHA  
Phone (608)342-1214

Richard Scullion, Chairman

September 10, 1992

Messrs. Jim and Joe Fraizer  
Fraizer Brothers Log & Lumber  
Box 134  
Muscoda, Wisconsin 53573

Dear Messrs. Fraizer:

On August 12, 1992 Tom Wildenborg (Wisconsin Department of Transportation), Ted Schnepf (Wisconsin River Rail Transit Commission Rehabilitation Project Manager), and I met with Mr. Fraizer (son) at your establishment to discuss upcoming renewal of your private rail grade crossing near Milepost 197.40. According to Item 4 of your crossing permit dated January 26, 1988, you are responsible for the cost of rebuilding this crossing when the rail line is rehabilitated.

Your crossing is scheduled to be rehabilitated on September 30, 1992. The Wisconsin River Rail Transit Commission will furnish all ties, rails, ballast, and other track material at no cost to you. The contractor's bid items for a 20 foot crossing which you are responsible for include:

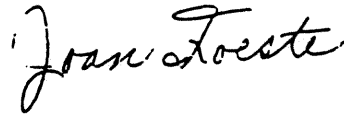
- construction of a 2 rail crossing with ties	\$1,045.60
- furnishing and installing crushed aggregate base	257.88
TOTAL:	<u>\$1,303.48</u>

According to the enclosed Summary of Key Private Grade Crossing Permit Policies, you must pay the \$1,303.48 crossing rehabilitation fee before construction begins at the end of

September or your crossing will be removed. Please make your check out to the Wisconsin River Rail Transit Commission and mail it to the Commission at 125 West Nebraska Street, Muscoda, Wisconsin 53573-0568 at least 3-4 business days before your scheduled rehabilitation date.

If you have any questions, please call me at 608-274-6185 after 8 pm.

Sincerely,

A handwritten signature in cursive script that reads "Joan Foeste".

Joan Foeste  
Planning Consultant

cc: Richard Scullion  
Ted Schnepf  
Tom Wildenborg  
Frank Huntington  
James Malloy

~~PRIVATE ROAD CROSSING NO. 1~~

PRIVATE ROAD CROSSING PERMIT

THIS AGREEMENT, made and entered into this, the 26th day of January, 1988, by and between The Wisconsin River Rail Transit Commission, hereinafter referred to as the "Permitter," and Frazier Bros., hereinafter called the "Permittee."

WITNESSETH:

That for and in consideration of the following undertakings, the parties hereto agree:

1. That for purposes of this permit the Permitter may in the future designate a railroad operator to serve as an agent of the Permitter.
2. That Permitter for and in consideration of the payments and covenants hereinafter mentioned to be made, kept and performed by the Permittee, hereby agrees that, subject to the terms and conditions herein provided, a road crossing may be constructed and thereafter during the term of this Permit be maintained, at the sole cost and expense of the Permittee and for Permittee's exclusive use and benefit, except as otherwise herein provided, over and across the right-of-way and track upon the following location:

A crossing 16 feet in width, with the centerline across the Permitter's track at 345 feet west of the next nearest private crossing at or near Mile Post 197.4, Town of Muscoda, Grant County, Wisconsin.
3. That Permittee shall, at Permittee's sole cost and expense, install said crossing in conformance with Permitter's specifications.
4. That Permitter or its Agent shall, at Permittee's sole cost and expense, maintain, repair, and renew said crossing. This may include the cost of rebuilding the crossing if and when the line is rehabilitated.
5. That Permittee will, at its sole cost and expense, prepare the grading for the approaches to the crossing and install the necessary drainage therefore and thereafter maintain, repair and renew the approaches and drainage so as to prevent water, mud or debris from entering the track zone area. All material used and all work performed hereunder will be of a quality that shall meet the approval of the permitter or Agent.
6. That Permittee will, at its sole cost and expense, perform grading in the area as necessary to provide adequate crossing visibility.
7. That Permittee will, at the sole cost and expense of the Permittee, provide and install two (2) "PRIVATE CROSSING" signs and two (2) "STOP" signs, one set of such signs on each side of the crossing in accordance with standards of the Permitter, and with all applicable laws. The Permitter or Agent will at the sole cost and expense of the Permittee, thereafter maintain said signs.
8. That Permittee will, at its sole cost and expense, keep the weeds, brush and other vegetation on each side of the crossing cut and mowed so as to provide adequate crossing visibility.